

# HOUSE BILL 350

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CF SB 214

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By: **Delegates Clippinger, Alston, Anderson, Bobo, Carter, Cluster, Cullison, Dumais, Dwyer, Glenn, Hammen, Kaiser, K. Kelly, Luedtke, McDermott, McHale, McIntosh, Mitchell, Niemann, B. Robinson, Rosenberg, Simmons, Smigiel, Tarrant, Valentino-Smith, Waldstreicher, Washington, Wilson, and Zucker**

Introduced and read first time: January 30, 2012

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 20, 2012

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – De Minimus Quantity**

3 FOR the purpose of establishing a reduced penalty for a person convicted of the use or  
4 possession of less than a certain quantity of marijuana; providing that, with a  
5 certain exception, the use or possession of less than a certain quantity of  
6 marijuana may not be considered a lesser included crime of any other crime;  
7 providing that a sentence imposed under this Act shall be stayed under certain  
8 circumstances without requiring an appeal bond; and generally relating to  
9 penalties for possession of marijuana.

10 BY repealing and reenacting, with amendments,

11 Article – Criminal Law

12 Section 5–601

13 Annotated Code of Maryland

14 (2002 Volume and 2011 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Criminal Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 5-601.

2 (a) Except as otherwise provided in this title, a person may not:

3 (1) possess or administer to another a controlled dangerous substance,  
4 unless obtained directly or by prescription or order from an authorized provider acting  
5 in the course of professional practice; or

6 (2) obtain or attempt to obtain a controlled dangerous substance, or  
7 procure or attempt to procure the administration of a controlled dangerous substance  
8 by:

9 (i) fraud, deceit, misrepresentation, or subterfuge;

10 (ii) the counterfeiting or alteration of a prescription or a written  
11 order;

12 (iii) the concealment of a material fact;

13 (iv) the use of a false name or address;

14 (v) falsely assuming the title of or representing to be a  
15 manufacturer, distributor, or authorized provider; or

16 (vi) making, issuing, or presenting a false or counterfeit  
17 prescription or written order.

18 (b) Information that is communicated to a physician in an effort to obtain a  
19 controlled dangerous substance in violation of this section is not a privileged  
20 communication.

21 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a  
22 person who violates this section is guilty of a misdemeanor and on conviction is subject  
23 to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

24 (2) (I) A person whose violation of this section involves the use or  
25 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not  
26 exceeding \$1,000 or both.

27 (II) 1. A PERSON CONVICTED OF THE USE OR  
28 POSSESSION OF LESS THAN ~~14~~ 7 GRAMS OF MARIJUANA IS SUBJECT TO  
29 IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 OR  
30 BOTH.

31 2. UNLESS SPECIFICALLY CHARGED BY THE STATE,  
32 THE USE OR POSSESSION OF LESS THAN ~~14~~ 7 GRAMS OF MARIJUANA UNDER

1 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A  
2 LESSER INCLUDED CRIME OF ANY OTHER CRIME.

3 **3. IF A PERSON IS CONVICTED UNDER THIS**  
4 **SUBPARAGRAPH AND FILES AN APPEAL, THE COURT SHALL STAY ANY SENTENCE**  
5 **IMPOSED THAT INCLUDES A PERIOD OF IMPRISONMENT DURING THE PENDENCY**  
6 **OF THE APPEAL WITHOUT REQUIRING AN APPEAL BOND.**

7 (3) (i) 1. In this paragraph the following words have the  
8 meanings indicated.

9 2. “Bona fide physician–patient relationship” means a  
10 relationship in which the physician has ongoing responsibility for the assessment,  
11 care, and treatment of a patient’s medical condition.

12 3. “Debilitating medical condition” means a chronic or  
13 debilitating disease or medical condition or the treatment of a chronic or debilitating  
14 disease or medical condition that produces one or more of the following, as documented  
15 by a physician with whom the patient has a bona fide physician–patient relationship:

16 A. cachexia or wasting syndrome;

17 B. severe or chronic pain;

18 C. severe nausea;

19 D. seizures;

20 E. severe and persistent muscle spasms; or

21 F. any other condition that is severe and resistant to  
22 conventional medicine.

23 (ii) 1. In a prosecution for the use or possession of  
24 marijuana, the defendant may introduce and the court shall consider as a mitigating  
25 factor any evidence of medical necessity.

26 2. Notwithstanding paragraph (2) of this subsection, if  
27 the court finds that the person used or possessed marijuana because of medical  
28 necessity, on conviction of a violation of this section, the maximum penalty that the  
29 court may impose on the person is a fine not exceeding \$100.

30 (iii) 1. In a prosecution for the use or possession of  
31 marijuana under this section, it is an affirmative defense that the defendant used or  
32 possessed marijuana because:

**HOUSE BILL 350**

1                           A.    the defendant has a debilitating medical condition  
2 that has been diagnosed by a physician with whom the defendant has a bona fide  
3 physician–patient relationship;

4                           B.    the debilitating medical condition is severe and  
5 resistant to conventional medicine; and

6                           C.    marijuana is likely to provide the defendant with  
7 therapeutic or palliative relief from the debilitating medical condition.

8                           2.    The affirmative defense may not be used if the  
9 defendant was:

10                           A.    using marijuana in a public place; or

11                           B.    in possession of more than 1 ounce of marijuana.

12                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2012.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.